Introduced by Senator Perata

February 18, 2004

An act to amend Section 18564 of, and to add Sections 18564.5, 19214, and 19214.5 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1376, as introduced, Perata.   Voting systems.

Existing law prohibits tampering with voting systems or equipment, making it a felony to tamper with or damage a voting machine, or to make or possess a key to a voting machine without authorization.

This bill would make it a felony to gain access without authorization, or provide access without authorization to another person, to a voting machine for the purpose of committing a prohibited act of tampering. The bill also would make it a felony to insert, without authorization, uncertified hardware, software, or firmware into any voting system, software, or equipment, as specified. By changing the definition of a crime, the bill would impose a state-mandated local program.

This bill would authorize the Secretary of State, Attorney General, and any local elections official to bring a civil action against an individual, business, or other legal entity that commits one of the specified acts of tampering before, during, or after an election.

Existing law prohibits the change or modification of any approved voting system or its parts until the Secretary of State has been notified in writing and makes a determination that the change does not impair the system's accuracy and efficiency, as specified.

This bill would provide that failure to notify the Secretary of State prior to any change in hardware, software, or firmware to a certified voting system is punishable pursuant to the above provisions as a felony act of tampering. This bill would authorize the Secretary of State to seek

injunctive, administrative, and certain other relief, including monetary damages, for an unauthorized change in hardware, software, or firmware to a voting system.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1   SECTION 1.   This Act shall be known as the ''Voting System
2   Security Act of 2004.''
3   SEC. 2.   The Legislature finds and declares that the integrity
4   of California's voting systems is of paramount concern to all state
5   voters. Any action that undermines that integrity must be
6   addressed in the most expeditious manner available to state
7   authorities. The Secretary of State, elections officials, and legal
8   authorities shall be empowered to thwart any effort that casts or
9   could cast doubt on the validity of the elections process and each
10 voter's right to have his or her vote counted.
11 SEC. 3.   Section 18564 of the Elections Code is amended to
12 read:
13 18564.   Any person is guilty of a felony, punishable by
14 imprisonment in ~~a~~ *the* state prison for two, three, or four years who,
15 before ~~or~~*, during*, *or after* an election:
16 (a) Tampers ~~with~~, interferes ~~with~~, or attempts to interfere with~~,~~
17 the correct operation of, or willfully damages in order to prevent
18 the use of, any voting machine, voting device, voting system, vote
19 tabulating device, or ballot tally software ~~program source codes~~.
20 (b) Interferes or attempts to interfere with the secrecy of voting
21 or ballot tally software program source codes.
22 (c) Knowingly, and without authorization, ~~makes or has in his~~
23 ~~or her possession a key to a voting machine that has been adopted~~
24 ~~and will be used in elections in this state~~ *gains access to or provides*
25 *another person or persons with access to a voting machine for the*
26 *purpose of committing one of the acts prohibited by this section*.

1   (d) Willfully substitutes or attempts to substitute forged ~~or~~*,*
2 counterfeit*, or malicious* ballot tally software program source
3 codes.
4   *(e) Knowingly, and without authorization, inserts or causes the*
5 *insertion of uncertified hardware, software, or firmware, for*
6 *whatever purpose, into any voting machine, voting device, voting*
7 *system, vote tabulating device, or ballot tally software.*
8   SEC. 4.   Section 18564.5 is added to the Elections Code, to
9 read:
10   18564.5.   The Secretary of State, Attorney General, and any
11 local elections official in this state may bring a civil action against
12 an individual, business, or other legal entity that commits one of
13 the acts specified in Section 18564 before, during, or after an
14 election.
15   SEC. 5.   Section 19214 is added to the Elections Code, to read:
16   19214.   Failure to notify the Secretary of State prior to any
17 change in hardware, software, or firmware to a voting system
18 certified or conditionally certified for use in this state is punishable
19 under Sections 18564 and 18564.5. The Secretary of State may
20 also seek injunctive and administrative relief when a voting system
21 has been compromised by the addition or deletion of hardware,
22 software, or firmware without prior approval.
23   SEC. 6.   Section 19214.5 is added to the Elections Code, to
24 read:
25   19214.5.   (a) The Secretary of State may seek all of the
26 following relief for an unauthorized change in hardware, software,
27 or firmware to any voting system certified or conditionally
28 certified in California:
29   (1) Monetary damages from the offending party or parties, not
30 to exceed ten thousand dollars ($10,000) per violation. For
31 purposes of this subdivision, each voting machine found to contain
32 the unauthorized hardware, software, or firmware shall be
33 considered a separate violation. Damages imposed pursuant to this
34 subdivision shall be apportioned 50 percent to the county in which
35 the violation occurred, if applicable, and 50 percent to the Office
36 of the Secretary of State for purposes of bolstering voting systems
37 security efforts.
38   (2) Immediate commencement of decertification proceedings
39 for the voting system in question.

1   (3) Refund of all monies paid by a locality for a compromised
2 voting system, whether or not the voting system has been used in
3 an election.
4   (4) Any other remedial actions authorized by law to prevent
5 unjust enrichment of the offending party.
6   (b) Prior to seeking any measure of relief under this section, the
7 Secretary of State shall hold a public hearing. The Secretary of
8 State shall give notice of the hearing in the manner prescribed by
9 Section 6064 of the Government Code in a newspaper of general
10 circulation published in Sacramento County. The Secretary of
11 State also shall transmit written notice of the hearing, at least 30
12 days prior to the hearing, to each county elections official, the
13 offending party or parties, any person that the Secretary of State
14 believes will be interested in the hearing, and any person who
15 requests, in writing, notice of the hearing.
16   (c) The decision of the Secretary of State, to seek any relief
17 under this section, shall be in writing and state the findings of the
18 Secretary. The decision shall be open to public inspection.
19   SEC. 7. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.

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